

IN RE CRANE PRAIRIE TIMBER SALE

IBLA 89-253

Decided June 12, 1989

Appeal from a decision of the Ashland Area Manager, Ashland Resource Area, Medford District Office, Oregon, Bureau of Land Management, denying a protest of proposed timber sale OR TS 8-61 (88-25).

Affirmed.

1. Oregon and California Railroad and Reconveyed Coos Bay Grant Lands:  
Timber Sales--Timber Sales and Disposals

A BLM decision to proceed with a proposed timber sale will not be disturbed on appeal where the appellant has not established that BLM failed to consider relevant matters of environmental concern, such as the impact on soils, water quality, and wildlife, or that the decision was unsupported by the record or contrary to law or fact.

APPEARANCES: Charles G. Levin, Esq., Grants Pass, Oregon, for appellants; Richard J. Drehobl, Ashland Area Manager, Ashland Resource Area, Medford District Office, Medford, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Headwaters, Inc., and Friends of the Greensprings have appealed from a decision of the Ashland Area Manager, Medford District Office, Oregon, Bureau for Land Management (BLM), dated January 5, 1989, denying their protest of the Crane Prairie timber sale, OR TS 8-61 (88-25), located within the Ashland Resource Area, Jackson-Klamath Sustained Yield Units (JKSYU's), in secs. 11, 13, 14, and 15, T. 39 S., R. 3 E., Willamette Meridian. The sale was initiated pursuant to authority granted BLM by the Oregon and California Railroad and Reconveyed Coos Bay Grant Land Act of 1937 (O&C Act), 43 U.S.C. || 1181a-1181f (1982).

Subsequent to issuance of an Environmental Assessment (EA) on February 12, 1988, and a Finding of No Significant Impact (FONSI) on August 4, 1988, BLM awarded the contract to high bidder Kogap Corporation at oral auction on September 22, 1988. The Crane Prairie contract allows removal of an estimated 5.5 million board feet of timber from 204 acres by means of overstory removal (12 acres), selection cut (15 acres), regeneration cut (65 acres), and clearcutting (112 acres).

On September 9, 1988, appellants filed a protest to the proposed Crane Prairie timber sale with the Medford District Office, contending that BLM had not followed procedures specified by the National Environmental Protection Act of 1969 (NEPA), 42 U.S.C. || 4332-4361 (1982), and the administrative regulations promulgated pursuant thereto by the Council on Environmental Quality. 40 CFR 1500 through 1508.

Appellants' protest alleged that the EA prepared by BLM for the Crane Prairie sale is violative of NEPA, in that it inadequately describes the affected environment; it fails to propose a reasonable range of alternatives for the decisionmaker; it does not adequately discuss the effects of the sale on water quality; it lacks scientific integrity; and it fails to disclose critical levels of escape and thermal cover retention for deer and elk.

The protest further claimed that the sale is violative of the National Trails System Act of 1968, in that logging would occur within 200 feet from the trail. Appellants charge that BLM has violated the O&C Act by not protecting the recreation resource area located adjacent to sale lands, specifically, the areas of Hyatt Lake and Howard Prairie. Finally, appellants claim that the sale violates BLM's visual resource management (VRM) guidelines.

In its decision denying appellants' protest, BLM stated that "NEPA Regulations [40 CFR] 1508.9 do not require a description of the affected environment when preparing environmental assessments"; 1/ the alternatives addressed by the EA and accompanying silvicultural prescription are adequate under prior Board decisions; the effects of the sale on water quality were addressed in the Final Jackson-Klamath Timber Management Environmental Statement (JKTMES); 2/ the record establishes that cumulative effects resulting from the sale, and impact on escape and thermal cover retention for deer and elk, were addressed by the EA; the EA and silvicultural prescription address relevant issues with scientific integrity; and VRM guidelines were addressed by the EA. BLM further found that the National Trails Systems Act of 1968 does not require prohibition of the sale, nor does the sale violate any provision of the O&C Act. Based upon the foregoing, BLM denied appellants' protest to the Crane Prairie timber sale.

1/ Jan. 5, 1989, decision at page 1.

2/ Several acronyms appear throughout the pleadings to designate the various documents prepared by BLM pursuant to NEPA. The documents most often referred to are the Final Jackson/Klamath Timber Management Environmental Statement (JKTMES), and the Josephine/Jackson-Klamath Timber Management Supplemental Environmental Impact Statement (SEIS). BLM, in the FONSI, refers to the "FEIS," and references to the same document in its Jan. 5, 1989, decision as the "JKTMES." For purposes of this decision, the final environmental impact statement will appear as "JKTMES," in accordance with its title, which does not include the word "impact." The Josephine/ Jackson-Klamath Supplemental Environmental Impact Statement will simply be referenced as "SEIS."

In their Statement of Reasons (SOR) at page 1, appellants renew the arguments set forth in their original protest, and further contend that the EA does not provide information specific enough to provide a decisionmaker with a "reasoned choice whether to accept or reject the no-action alternative, or any other alternative." Appellants allege in the SOR that the EA is inconsistent with BLM's 10-year resource management plan insofar as its analysis of the impacts to water quality are concerned. The SOR also advances additional argument in response and reply to BLM's decision denying appellants' protest. Pending the outcome of this appeal, appellants have requested a stay of BLM's January 5, 1989, decision.

As noted in earlier decisions and orders issued by this Board, these general arguments have previously been raised by appellant Headwaters, Inc., in protests against other timber sales in the Medford district. Headwaters, Inc., 101 IBLA 234 (1988); In re Blackeye Again Timber Sale, 98 IBLA 108 (1987); In re Upper Floras Timber Sale, 86 IBLA 296 (1985). While prior Board decisions and orders have generally found similar arguments to be insufficient to reverse the District Manager's decision to proceed with a sale, the Board will scrutinize the record in this case to determine whether there is error either in fact or law in the Area Manager's decision. See In re Blackeye Again Timber Sale, *supra*.

Appellants have charged in their protest, at page 1, that the EA does not comply with 40 CFR 1502.15 and 1508.28, in that it does not adequately "describe the environment which will be specifically affected by the Crane Prairie Timber Sale, [but] 'tiers' to the MFP, EIS, SEIS." 40 CFR 1502.15 applies to environmental impact statements (EIS), and does not pertain to the EA. 3/ 40 CFR 1508.28 defines "tiering," as follows:

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

3/ 40 CFR 1502.15 provides that:

"The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement."

(Emphasis added).

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

The Crane Prairie sale area is described in the EA as

adjacent to, and east of Hyatt Lake on the Dead Indian Plateau \* \* \*. Slopes within the proposed sale area range from 0 to 40 percent with an average slope of approximately 15-20 percent. \* \* \* Elevation of the proposed sale ranges between 5,200 to 5,400 feet. Average annual precipitation is approximately 40 inches.

(EA at 9). Soils are "Pinehurst Loam, Woodseye Rock outcrop and Farva very cobbly loam," and are generally well-drained, except for the Woodseye series, "which is generally found in the nonforested areas in or adjacent to the sale area." Id. at 9, 10.

According to the EA, sections listed in the proposed sale were previously entered under four timber sales between 1960 and 1968, and some soil compaction occurred in previously harvested areas, due to tractor yarding without site preparation. Id. Reference is made to existing wildlife, including elk, deer, occasional bear sightings, ospreys, great gray owls, and red-tailed hawks. Id. According to the EA, no known threatened or endangered animals inhabit the sale area, although an active bald eagle nest on adjacent private land has been located. Id.

Impacts upon air quality, noise, local watershed, wildlife, fisheries, recreation, visual resources, cultural resources, threatened or endangered plants, vegetation, and minerals are described in the EA. Id. at 9-21. In addition to the description of the affected terrain in the EA, a silvicultural prescription was prepared by BLM which describes the proposed sale area by unit and stand number, setting forth conservation data and recommendations specific for each removal site.

The record does not support appellants' assertions that BLM has failed to provide a site-specific analysis in conformance with the requirements of NEPA, as implemented by 40 CFR 1502.15 and 1508.28. On the contrary, both the EA and the silvicultural prescription provide site-specific data with respect to environmental impacts of the sale. The EA is therefore a "site-specific statement or analysis" which is tiered to a programmatic EIS, as contemplated by 40 CFR 1508.28(a).

Appellants charge that the EA violates NEPA because it does not consider the cumulative impacts of the sale. Appellants request that BLM prepare an EIS discussing the cumulative impacts of public and private timber harvesting upon the Jenny Creek watershed.

Anticipated cumulative impacts of the proposed sale with respect to watershed, wildlife, and visual resources are set forth in the EA at pages 17-18. The EA, at page 17, states: "The cumulative impact section describes effects, not adequately described in the EIS or SEIS, of the

proposed action when added to past, present, and reasonably foreseeable future activities." In the FONSI, BLM stated at the outset that:

The Interdisciplinary Team of the Ashland Resource Area of the Medford District \* \* \* has analyzed a proposal and various alternatives for accomplishment of the area's timber harvest requirements established by the record of decision (ROD) of May 13, 1980, as amended on December 11, 1981, and by the Re-Issued Record of Decision (ROD) of November 15, 1985, and supported by the Jackson-Klamath Timber Management Environmental Statement (FEIS) of November 1979, and Josephine/Jackson-Klamath Timber Management Supplemental Environmental Impact Statement (SEIS) of May 1985. The attached environmental assessment (EA) and this FONSI are tiered with the aforementioned FEIS, SEIS, and RODs.

The Ashland Area Manager determined, based upon the EA, that

[t]he alternative actions are local in nature with the adverse impacts identified being of a short term (less than ten years) nature. The estimation of impacts was based on research, professional training, and experience of the interdisciplinary (ID) team. \* \*  
\* The design features identified in the attached EA would assure that no significant site specific nor cumulative impacts would occur to the human environment other than those already addressed in the Jackson-Klamath Timber Management FEIS and SEIS.

(FONSI at 2).

Thus, it is clear from the record in this case that the EA is supplemental to the programmatic EIS for the JKSYU's of the Medford District, BLM, of which the Crane Prairie sale is a part. Where the cumulative impacts of a timber harvest are discussed in the EIS, BLM may tier the EA to the EIS such that the cumulative impacts of the entire program need not be reiterated. In re Letz Boogie Timber Sale, 102 IBLA 137 (1988); In re Humpy Mountain Timber Sale, 88 IBLA 7 (1985); Ventling v. Bergland, 479 F. Supp. 174, 180 (D.S.D.), aff'd mem., 615 F.2d 1365 (8th Cir. 1979); see Minnesota Public Interest Research Group v. Butz, 498 F.2d 1314, 1323 n.29 (8th Cir. 1974).

Appellants argue that the range of alternatives to the proposed action provided by BLM in the EA is inadequate. The EA for the Crane Prairie sale considers the environmental impact of the proposed action, as well as the delay or no action alternative. The EA lists other removal alternatives considered and rejected, and states reasons for their elimination (EA at 1-8, 12-21). As we stated in Blackeye Again, supra at 111,

it [is] not necessary for BLM to discuss the myriad of alternatives which could be devised, each resulting in an incremental change in the overall impact of the sale. It is sufficient that BLM set forth the many implications of either its proposed action

or the no action alternative, which are at either end of the spectrum.

Appellants have presented the Board with no analysis which would justify a reconsideration of its rulings relating to the adequacy of the range of alternatives considered by BLM in an EA. See In re Blackeye Again Timber Sale, supra; In re Upper Floras Timber Sale, supra. The Board finds that the EA includes a description of "appropriate alternatives" as required by section 102(2)(E) of NEPA.

Citing Sierra Club v. U.S. Forest Service, 843 F.2d 1190 (9th Cir. 1988), appellants contend that the EA does not consider the impacts of the Crane Prairie sale upon water quality, in violation of 40 CFR 1508.27(b)(10). BLM responds that the effects of the 10-year JKSYU timber management plan upon water quality were considered in the JKTMEs. According to BLM, since it was determined in the JKTMEs that the 10-year timber management plan would have no significant impact upon the environment, the EA tiered this resource value to the JKTMEs.

The Forest Service (FS), in Sierra Club v. U.S. Forest Service, supra, attempted nine timber sales in the Sequoia National Forest. EA's were prepared for eight of the nine sales. Finding no significant impact upon the environment, the FS did not prepare EIS's for any of the sales. One tract determined available for logging had neither the benefit of an EA nor an EIS. FS proposed clearcutting in areas populated by giant sequoias. The Sierra Club challenged the sales in U.S. District Court for the Eastern District of California, and moved for temporary injunction. The decision issued by the court of appeals reversing the District Court's denial of injunctive relief does not reveal the existence of prior EIS's to which the challenged EA's were tiered.

In the EA, at page 12, BLM discusses the environmental impacts of the proposed sale and alternatives. At the outset of this discussion, the EA states, "Resource values are not identified in this section when there are no site specific impacts, site specific impacts are considered negligible or the cumulative impacts described in the timber EIS and SEIS were considered adequate." With respect to water quality, the Final JKTMEs, dated November 1979, states as follows:

Increased sediment yield as a result of the proposal would not have a significant impact on the whole of the JKSYU's, but could have significant adverse impacts on water quality in localized areas, particularly small stream reaches. Those activities which would impact small streams include yarding, road construction, slash disposal, and mechanical scarification. Other phases of the management plan would not significantly increase sediment yield. Harvest by clearcutting and shelterwood methods, and slash burning would enrich streams with nitrogen and other nutrients.

(JKTMEs at 3-11). The JKTMEs discuss the impact of sediment yield and chemical quality upon water quality. Id. at 3-11 through 3-18. The JKTMEs conclude that

[i]ncrease in water yield from the 30,500 acres treated under the proposed action would be 4,500 acre-feet per year. This increase would occur on individual watersheds and could have significant adverse effects, especially on smaller stream reaches. The velocity of streamflow would increase causing some additional erosion. \* \* \* Road construction would also cause an increase in average peak flows following the first major storm of the season. Major peak flows would not change significantly since they normally occur in winter months when the soil is saturated \* \* \*. Absolute increases in minimum streamflow would be small, but the relative change would be significant \* \* \*.

\* \* \* \* \*

Because the acreage treated under the proposed action is a fairly small percentage of the acreage of the JKSYU's, peak flows and total water yield of the major watersheds would not be significantly impacted.

Sediment yield from disturbed lands would increase 15,650 tons under the proposed action. This increase is about 1.5 percent of the present sediment yield of the JKSYUs. While impacts to overall water quality would not be significant, localized areas could be significantly affected, particularly after the first major storms of the season. Should these areas feed recreational water bodies, impacts to water quality for recreation may occur. [References omitted.]

Id. at 18. Impacts upon recreation, including adverse impacts of increased turbidity upon fishing success, are discussed in the JKTMES at pages 3-46 through 3-50. See JKTMES at 3-48 through 3-49.

Issued in May 1985, the SEIS analyzed the environmental impacts of changes in ratio of harvest practices which would cause an increase in clearcutting, with an associated decrease in shelterwood harvest. According to the SEIS summary, at v:

For the District, the adjustment in clearcut and shelterwood harvest practice ratios would result in a ratio of 52 and 48 percent respectively. \* \* \* For the J-KSYUs, clearcut harvest would account for 36 percent and shelterwood for 64 percent. About 76 percent (\* \* \* 78 percent of J-KSYUs) of the increased clearcutting would be done in three-stage shelterwood areas created between the 1950s and 1970s.

Potential repercussions from an increased percentage of clearcutting on water quality and quantity in the JKSYU's were addressed in the SEIS at page 15-18. With respect to water quantity, the SEIS summarized:

[T]he water yield estimates resulting from the change in ratio of harvest practices in the \* \* \* J-KSYUs would be slightly greater (\* \* \* 0.1 percent \* \* \*) than those estimated for the proposed

actions in the FEISs over the ten-year period. These increases in water yields for the JSYU and J-KSYUs would be extremely small and undetectable when combined with flows from unlogged areas and areas which have recovered hydrologically from harvesting. The change in ratio of harvest practices would not be expected to have any effect on peak flows or low flows in \* \* \* the J-KSYUs.

Id. at 17. Anticipated impacts on water quality were summarized in the SEIS as follows:

[T]he reduced levels of road construction and acres harvested would result in a decrease of total sediment yield as compared to the estimated sediment yield for the proposed actions in the FEISs. Also, no change in impacts to maximum summer stream temperatures would be expected to result from the change in ratio of harvest practices.

Id. at 18.

Appellants have presented us with no facts which would allow a conclusion that this case is similar to Sierra Club v. U.S. Forest Service, *supra*. Based upon our review of the JKTMEs and the SEIS, we conclude that BLM has appropriately tiered to the JKTMEs for nonlocalized or cumulative effects of its timber management program upon water quality. The JKTMEs indicated that increased sedimentation could occur on a localized basis. The EA, however, addresses these local impacts at page 14, as follows:

The risk of increased sedimentation into streams, and erosion as a result of the proposed action are low. There may be a slight increase in sedimentation in the Class 3 or 4 drainages in the sale area the first year following this harvest operation but the effect of this increase would be negligible in the streams and the Hyatt Lake fisheries.  
[4/]

Appellants contend that the EA lacks scientific integrity, and fails to disclose essential information concerning "critical levels of escape and thermal cover retention for deer and elk" (SOR at 2). Appellants, however, have not provided the Board with factual information to support these broad, general allegations. In In re Upper Floras Timber Sale, *supra* at 305, this Board held:

In challenging policies of BLM in managing the Federal lands, [a] party bears the burden of showing error in [BLM's]

4/ While appellants have acknowledged that the localized effects of increased sedimentation were addressed in the EA (SOR at 1), we nevertheless reference the EA concerning this issue to emphasize BLM's use of "tiering"; that is, in this instance, where the JKTMEs indicated a potential localized impact, the Crane Prairie EA has identified the impact on a specific site. Where the JKTMEs and the SEIS found no potential impacts, the EA has simply referred to the prior environmental documents.



actions. A mere disagreement or difference of opinion will not suffice in this respect. Robert C. Salisbury, 79 IBLA 370, 379 (1984). Moreover, appellant must do more than simply level broadside charges at BLM; the error alleged must be stated with reasonable particularity and supported by objective proof.

In In re Blackeye Again Timber Sale, *supra*, this Board stated at page 110:

A determination that a proposed action will not have a significant impact on the quality of the human environment, based on an EA, will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable in light of the environmental analysis. Glacier-Two Medicine Alliance, 88 IBLA 133 (1985). The party challenging the determination must show it was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. *Id.* The burden of proof is on [the challenging] party. Township of Lower Alloways Creek v. Public Service Electric & Gas Co., 687 F.2d 732, 747 (3d Cir. 1982). [Footnotes omitted.]

A mere disagreement or difference of opinion will not suffice to show error. In re Trailhead Timber Sale, 97 IBLA 8, 10 (1987); Robert C. Salisbury, *supra*. Appellants have not presented this Board with objective evidence which refutes the scientific integrity of the EA, nor have appellants provided their own data or studies to support allegations that deer and elk herds will be devoid of essential thermal and escape cover after the sale. We conclude, therefore, that appellants' allegations that the EA lacks scientific integrity and does not consider relevant information regarding wildlife habitat is tantamount to a mere disagreement or difference of opinion, and therefore does not show error by BLM in its finding that the Crane Prairie timber sale will have no significant environmental impact.

Appellants charge that BLM has violated its own VRM guidelines, the National Trails System Act of 1968, and the O&C Act, by failing to consider and protect the multiple uses for which public lands are mandated to be available, including recreational uses. Appellants have not presented this Board with objective evidence of a factual nature to support these broad allegations, nor have they provided data or studies to show how recreational uses will be impaired. No theory with supporting data has been advanced by appellants which would allow us to conclude that recreational use is in fact impaired in violation of statutory mandates. We have no option but to conclude, therefore, that these allegations illustrate mere disagreement or difference of opinion, and do not show error by BLM in its finding that the Crane Prairie timber sale will have no significant environmental impact. See In re Trailhead Timber Sale, *supra*; In re Upper Floras Timber Sale, *supra* at 305; Robert C. Salisbury, *supra*.

As appellants have not shown that BLM erred in law or in fact in its finding of no significant impact, we affirm the January 5, 1989, decision by BLM denying their protest of the Crane Prairie timber sale. To the extent appellants have raised arguments which we have not specifically addressed herein, they have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Medford District Office to proceed with the Crane Prairie Timber Sale is affirmed, and the Motion for Stay filed by Headwaters, Inc., is denied.

Franklin D. Arness  
Administrative Judge

I concur:

Bruce R. Harris  
Administrative Judge